

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK,
Plaintiff,

VS.

MISSION GUADALUPANA EVENTOS,
LLC D/BA EL CAMPANARIO BALL
ROOM, LLC,
Defendant.

§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 3:19-cv-00355

PLAINTIFF’S ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Great American Insurance Company of New York, Plaintiff in the above-styled action, and files this its Original Complaint for Declaratory Judgment and would respectfully show this Honorable Court as follows:

I. INTRODUCTION

1. Plaintiff, Great American Insurance Company of New York (hereinafter “Great American” or “Plaintiff”), is a foreign insurance company organized and existing under the laws of the State of New York with its principal place of business in the State of Ohio.

2. Defendant, Mission Guadalupe Eventos, LLC d/b/a El Campanario Ball Room, LLC (hereinafter “El Campanario” or “Defendant”) is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in the State of Texas. Defendant, El Campanario, may be served with citation and process by serving its registered agent for service of process Jose M. Garcia, 6936 Ramada, El Paso, Texas 79912, or wherever he may be found.

3. This Court has original jurisdiction over this civil action under the provisions of 28 U.S.C. § 1332. Plaintiff, by nature of its formation and principal place of business, is a citizen of the States of New York and Ohio. Defendant El Campanario, by virtue of its formation and principal place of business, is a citizen of the State Texas. The amount in controversy, exclusive of interest and costs, is in excess of \$75,000.00.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(2) because the facts and events which give rise to this controversy occurred in Socorro, El Paso County, Texas.

5. Great American brings this action under 28 U.S.C. § 2201, et seq., the Federal Declaratory Judgment Act, and Chapter 37 of the Texas Civil Practice and Remedies Code to determine its obligation under a contract of insurance with El Campanario. Specifically, Great American seeks a determination from the Court that a Policy Holder Release executed by El Campanario releases Great American from further liability to El Campanario for damage to multiple buildings at the Defendant's facilities located at 649 Apodaca Road, Socorro, Texas arising out of a hail storm that occurred on or about October 31, 2018.

6. Great American has complied with the laws of the State of Texas pertaining to corporations engaged in insurance business therein, has paid all taxes and assessments and license fees, and has filed all reports required by the State of Texas.

II. FACTUAL BACKGROUND

7. At all times relevant herein, El Campanario owned a wedding and events facility located at 649 Apodaca Road, Socorro, Texas (the "Property"). The Property is located in El Paso County.

8. Great American issued a commercial property insurance policy, policy number MAC E264074 (the "Policy"), to El Campanario that provided coverage to the Property subject to

the Policy's terms, conditions, endorsements, and exclusions. The Policy had effective dates of October 18, 2018 to October 18, 2019.

9. On or about October 31, 2018, hail fell on the Property and damaged the roofs and other portions of the buildings located thereon. El Campanario submitted a claim to Great American following the hailstorm for damage to its buildings. Great American assigned claim number A00187562 and commenced its investigation into the claim. After Great American completed its investigation, it determined what it believed to be the amount of the covered loss owed under the Policy and provided this information to El Campanario. El Campanario disagreed with Great American's loss determination and sought a higher amount. Eventually, Great American and El Campanario reached a compromise settlement of the amount of the loss. The terms of the settlement were that Great American would pay El Campanario \$142,668.83 in exchange for a full and final policyholder's release of the claim and all damages arising out of the October 31, 2018 storm ("the Release"). El Campanario agreed to this settlement, accepted the consideration and executed the Release. *See* Exhibit A, an unexecuted full copy of the Release and Exhibit B, the signature page of El Campanario's authorized representative. These Exhibits are incorporated herein, by reference, for all purposes.

10. The Release provides, in relevant part,

IN CONSIDERATION of the sum of One Hundred Forty-Two Thousand Six Hundred Sixty-Eight And 83/100 Dollars (\$142,668.83), and other good and valuable considerations to me/us paid, the receipt whereof is hereby acknowledged, El Campanario Ball Room, LLC (being of lawful age) do hereby release and forever discharge Great American Insurance Company, of New York, its heirs, administrators, executors, successors and assigns, from any and all action, causes of action, claims and demands whatsoever for, upon or by reason of any damage, loss or injury and all consequential damage, which heretofore have been or which hereafter may be sustained by me/us in consequence of Any and all hail/wind damage to multiple buildings which may have been sustained October 31, 2018.

IT BEING FURTHER AGREED AND UNDERSTOOD, That the payment of the

said amount is not to be construed as an admission of liability, but is a compromise of a disputed claim and that this release is executed in full settlement and satisfaction of rights of the undersigned under Policy No. MAC E254074 arising out of said above referred to.

See Exhibit A.

11. On or about October 1, 2019, El Campanario, through its agent, submitted a new claim for hail damage to one of the buildings located on the Property, claiming this building, a large, permanently installed tent, was damaged as the result of a hailstorm that occurred on September 30, 2019. Great American opened a new investigation and had the property inspected by a local independent adjuster. This adjuster confirmed the presence of hail damage to the permanently installed tent-building at the Property. Additionally, as a part of its investigation, Great American researched hailstorms that occurred on or around the Property during the relevant timeframe. Through this research, it was determined no hail had fallen at the location of the property since the previous October 2018 storm – the storm that was the subject of the Release. Further, Great American retained an engineer who determined the damage to the tent-building resulted from the October 30, 2018 hailstorm. The fact that the damage to the tent building occurred during the October 2018 storm appears now to be undisputed.

12. By virtue of the agreement reached between Great American and El Campanario, Great American was released from all further liability for damages arising out of the October 30, 2018 hailstorm because of its negotiated and compromise payment of the agreed consideration in exchange for the execution of the Release from El Campanario in favor of Great American. Under Texas law, such releases are binding and enforceable. *Keck v. Nat'l Union Fire Ins. Co.*, 20 S.W.3d 692 (Tex. 2000).

III. REQUEST FOR DECLARATORY RELIEF

13. Great American petitions the Court, pursuant to 28 U.S.C. § 2201, et seq., the

Federal Declaratory Judgment Act, and Chapter 37 of the Texas Civil Practice and Remedies Code, for the following declarations, that

- a. the damage currently claimed by El Campanario to its permanently installed tent-building resulted from the October 31, 2018 hailstorm;
- b. the October 31, 2018 claim for damage to the El Campanario buildings, claim A00187562, was the subject of the Release;
- c. the Release was supported by valid and adequate consideration and is legally enforceable;
- d. the Release applies to release Great American from any liability for any further damages, including the damage to El Campanario's permanently installed tent-building, arising out of the October 31, 2018 hailstorm.
- e. Great American is excused from any legal liability for any damage to this permanently installed tent building by virtue of the Release.


IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Great American Insurance Company of New York, respectfully prays that the Court

- a. Render the declarations requested herein; and
- b. Grant it any and all other relief to which it may show itself justly entitled.

Respectfully submitted,

GAUNTT KOEN BINNEY & KIDD, LLP

By: _____

J. Chad Gauntt

State Bar No. 07765990

chad.gauntt@gkbklaw.com

Attorney in Charge

25700 I-45 North, Suite 130

Spring, Texas 77386

Telephone: 281-367-6555

Facsimile: 281-367-3705

**COUNSEL FOR PLAINTIFF GREAT
AMERICAN INSURANCE COMPANY
OF NEW YORK**